IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

MISC.CIVIL APPLICATION NO. 51 OF 2004

Office notes, office memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

Shri S.I.Memon for the Applicants.

Shri K.A.Sampat for the Respondents nos.4 to 6

CORAM : ABHAY S.OKA, J.

DATED : 26th August, 2004.

P.C.:

1. Heard the learned Counsel for the parties.

2. Prayer in this Application is for transfer of S.C.Suit No.2337 of 2003 pending in the Bombay City Civil Court to this Court on the ground that Suit No.3796 of 2003 is pending on the Original Side of this Court.

3. In so far as the suit pending in the City Civil Court is concerned, the same is filed by the Respondent No.1 against the Applicants in this application. The suit is filed for declaration that the attempt of the Applicants to break open locks on the suit flats viz. Flat Nos.201 and 202 of Shanti Kunj, Plot No.255 CTS No.E-472, 12th

Road, Khar (West), Bombay 400 052, is bad-in-law and for consequential relief of a decree of perpetual injunction. In so far as the suit pending on the Original Side of this Court is concerned, the Applicants are the Plaintiffs and the Respondents herein are the Defendants. The said suit is filed for declaration that the Respondents Nos.1 to 3, who are developers, have committed breach of the development agreement dated 14th July 1987 and that the same has been validly terminated by the Applicants. The prayers made in the said suit relate to Flat Nos.101 and 202 on the first floor of the building constructed on the property as well as flat Nos.201 and 2002 in the building. The flat Nos.201 and 202 form commmon subject matter of both the suits. Therefore the evidence to some extent will also be common.

4. This Application is not opposed by the Respondents Nos.1 to 3. The Respondent No.1, as stated earlier is the Plaintiff in the City Civil Court suit and the Respondents Nos.2 and 3 are the partners of Respondent No.1. The prayer for transfer is opposed by the Respondents Nos.4 to 6 who are admittedly not the parties to the suit in the City Civil Court. The learned Counsel for the Respondents Nos.4 to 6 submitted that the High Court has no jurisdiction to entertain and try the suit filed by the Applicants and therefore, an

application has been moved under section 9A of the Code of Civil Procedure 1908 praying for trial of preliminary issue of jurisdiction. He submitted that if the issue of jurisdiction is decided by this Court against the Applicants, the suit filed by the Applicants will be transferred to some other Court and the very purpose of transfer will be defeated. He submitted that the suit filed in the City Civil Court has now become infructuous, as the Applicants have already adopted the due process of law by filing suit in this Court.

6. I have considered the rival submissions. The Plaintiff in the City Civil Court i.e. Respondent No.1 herein, is not opposing the prayer for transfer. The opposition is from Respondents Nos.4 to 6 who are not really affected in any manner. Notwithstanding the transfer of the suit from the City Civil Court to this Court, the application made by the Respondents Nos.4 to 6 under section 9A of the said Code in the High Court suit is bound to be decided on its own merits.

7. The real dispute appears to be between the Applicants and the Respondent No.1 who is the developer. The flat purchasers are affected by the said dispute. The Respondent Nos.4 to 6 are claiming rights in respect of the flat No.101 and 102 through the Respondent No.1-Developer.

Considering the fact that the substantive suit is pending in this Court in which it is contended that the development agreement in favour of the Respondent No.1 stands terminated, to avoid multiplicity of the proceedings, it will be in the interests of justice if the suit filed by the Respondent No.1 in the City Civil Court is transferred to this Court.

8. Accordingly Misc.Civil Application is allowed in terms of prayer clause (a). It is made clear that the contentions of the parties on merits in both the suits are expressly kept open.

9. Certified copy is expedited.

Judge.